



## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

October 22, 2007

### **H.R. 3685** **Employment Non-Discrimination Act of 2007**

*As ordered reported by the House Committee on Education and Labor  
on October 18, 2007*

#### **SUMMARY**

H.R. 3685 would prohibit employment discrimination based on sexual orientation. Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 3685 would cost \$28 million over the 2008-2012 period for the Equal Employment Opportunity Commission (EEOC) to handle additional discrimination cases. The bill could affect direct spending, but we estimate that any such effects would be less than \$500,000 annually. H.R. 3685 would not affect revenues.

H.R. 3685 would prohibit state, local, and tribal governments from discriminating against employees and applicants for employment based on sexual orientation, and it would require those governments to post notices regarding such prohibitions. Those requirements would be intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). However, CBO estimates that the costs of complying with those mandates would not be significant and would not exceed the thresholds established in UMRA (\$66 million in 2007, adjusted annually for inflation).

The bill also would impose a number of mandates on private-sector employers, employment agencies, and labor organizations. CBO estimates that the direct cost of those requirements would not exceed the annual threshold specified in UMRA (\$131 million in 2007, adjusted annually for inflation) in any of the first five years the mandates would be effective.

#### **ESTIMATED COST TO THE FEDERAL GOVERNMENT**

The estimated budgetary impact of H.R. 3685 is shown in the following table. The costs of this legislation fall within budget function 750 (administration of justice).

	By Fiscal Year, in Millions of Dollars				
	2008	2009	2010	2011	2012
<b>SPENDING SUBJECT TO APPROPRIATION<sup>a</sup></b>					
EEOC Spending Under Current Law					
Estimated Authorization Level <sup>b</sup>	339	351	362	375	387
Estimated Outlays	338	350	361	374	386
Proposed Changes					
Estimated Authorization Level	4	6	6	6	6
Estimated Outlays	4	6	6	6	6
EEOC Spending Under H.R. 3685					
Estimated Authorization Level <sup>b</sup>	343	357	368	381	393
Estimated Outlays	342	356	367	380	392

- a. In addition to the bill's discretionary cost, H.R. 3685 could affect direct spending, but CBO estimates that any such effects would be less than \$500,000 annually.
- b. The estimated authorization levels for 2008 through 2012 are CBO baseline estimates. A full-year appropriation for 2008 for EEOC has not yet been enacted, so we adjusted the amount appropriated for the agency in 2007 for anticipated inflation.

## BASIS OF ESTIMATE

CBO estimates that implementing H.R. 3685 would cost \$28 million over the 2008-2012 period, assuming appropriation of the necessary amounts. For this estimate, CBO assumes that the necessary amounts will be appropriated near the start of each fiscal year and that outlays will follow the historical spending pattern of those activities. The bill could affect direct spending, but we estimate that any such effects would be less than \$500,000 annually.

## Spending Subject to Appropriation

The EEOC expects that implementing H.R. 3685 would increase its annual caseload (currently about 90,000 cases) by about 5 percent and would require an additional 60 to 80 staff. CBO estimates that the costs to hire an additional 70 employees would reach \$6 million annually by fiscal year 2009, subject to the appropriation of the necessary amounts. We expect that enacting H.R. 3685 also would increase the workload for a few other agencies, such as the Merit Systems Protection Board, but any increase in costs for those agencies would not be significant because of the small number of additional cases.

The additional cases resulting from H.R. 3685 also would increase the workload of the Department of Justice's Civil Rights Division and the federal judiciary. However, CBO estimates that increased costs for those agencies would also not be significant because of the relatively small number of cases referred to them.

### **Direct Spending**

Enacting H.R. 3685 could increase payments from the Treasury's Judgment Fund for settlements against federal agencies in discrimination cases based on sexual orientation. However, CBO estimates that any increases in direct spending would be less than \$500,000 annually.

### **ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS**

H.R. 3685 would prohibit state, local, and tribal governments from discriminating against employees and applicants for employment based on sexual orientation, and it would require those governments to post notices regarding such prohibitions. Those requirements would be intergovernmental mandates as defined in UMRA. The costs of the mandates would include the costs of posting notices and modifying employment procedures to avoid discriminatory practices. CBO assumes that the costs of notices would likely be relatively minor and would be made in the course of other routine updates. Similarly, changes to employment procedures likely would build on such things as ongoing training and updates to personnel manuals. Thus, CBO estimates that compliance costs would not be significant and would not exceed the thresholds established in UMRA (\$66 million in 2007, adjusted annually for inflation).

Under H.R. 3685, by accepting any federal financial assistance, states would waive their sovereign immunity under the 11th Amendment and would be subject to suit for discriminatory practices. Because UMRA excludes conditions of federal assistance from the definition of an intergovernmental mandate, any costs resulting from potential suits would not be the result of complying with an intergovernmental mandate as defined in UMRA. In any event, the number of such cases likely would be very small, and states would not be subject to punitive damages.

## **ESTIMATED IMPACT ON THE PRIVATE SECTOR**

The bill would impose a number of mandates on many private-sector employers, employment agencies, and labor organizations. It would prohibit employers from discriminating against any worker on the basis of sexual orientation in hiring, firing, pay, and other aspects of employment. The bill would also require employers to modify the notices they are required to post regarding federal laws that protect employees from discrimination and set minimum wages. CBO estimates that the direct costs of complying with those mandates would not exceed the annual threshold specified in UMRA (\$131 million in 2007, adjusted annually for inflation) in any of the first five years the mandates would be effective.

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